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CV 02-2460 #1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OLYMPIC COLLECTION, INC.,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ROBERT HICKS, an individual and JANE
DOE HICKS, his spouse, if any, and the
marital community composed thereof, and
DM GROUP N.A., INC., an Ohio corporation)
or dissolved corporation, and AMERITEXT)
PUBLISHING, INC., a Delaware corporation)
or dissolved corporation, all individually)
and/or collectively doing business as)
"YELLOW PAGES PLUS" and/or)
INFORMATION-411.COM,)

Defendants.

NO.

COMPLAINT—CLASS ACTION

(JURY DEMAND)

C02-2460Z

Plaintiff Olympic Collection, Inc., individually and on behalf of all others similarly
situated, hereby alleges as follows:

I. NATURE OF THE ACTION

1.1 This is a class action lawsuit on behalf of all persons who paid money as a
result of an unfair and deceptive mass-mailing scam perpetrated by defendants. Specifically,

defendants, (either individually, collectively, and/or both) have engaged in an unlawful scheme of creating and mailing "look-alike invoices" to hundreds of businesses in the State of Washington and elsewhere. Defendants' look-alike invoices are virtually identical to legitimate, regularly-received invoices for telephone and advertising services. Defendants have engaged and are continuing to engage in this unlawful scheme in order to deceive such businesses into believing that they are paying a legitimate invoice for telephone and/or advertising services, when, in fact, they are paying money that is not owed for a service that is not desired. Defendants' conduct as alleged herein has caused hundreds of businesses, in Washington and elsewhere, to suffer damages.

1.2 This action seeks declaratory and permanent injunctive relief, as well as compensatory and punitive damages against defendants, in order to make the businesses deceived by defendants whole and to deter defendants from engaging in such unlawful and deceptive practices in the future. Plaintiff and others similarly situated also seek prejudgment interest, as well as reimbursement of all attorneys' fees and costs incurred in pursuing this action.

II. NAMED PARTIES

2.1 Plaintiff Olympic Collection, Inc. is a corporation regularly doing business in King County, Washington. Plaintiff is a small business engaged in debt collection and tenant screening.

2.2 Defendant DM Group, N.A., Inc. is a corporation or dissolved corporation organized or formerly organized under the laws of the State of Ohio.

2.3 Defendant Ameritext Publishing, Inc. is a corporation or dissolved corporation believed to be organized or formerly organized under the laws of the State of Delaware.

2.4 Defendant Robert Hicks is an owner, officer and director and/or former owner, officer and director of the corporate defendants named herein. Defendant Robert Hicks is believed to reside in the State of Ohio. Jane Doe Hicks is a pseudonym for the spouse of defendant Robert Hicks.

2.5 Defendants, acting individually and/or collectively, have done and are regularly doing business under the names Yellow Pages Plus and Information-411.com. On information and belief, all defendants, individually and/or collectively, have engaged in the unlawful conduct alleged herein. Defendant Robert Hicks personally participated in and directed the unlawful conduct alleged herein on behalf of the corporate defendants, his own behalf, and on behalf of his marital community.

2.6 At all times relevant to this lawsuit, defendants were doing business in King County, Washington.

III. JURISDICTION AND VENUE

3.1 This Court is vested with original jurisdiction over the plaintiff's federal law pursuant to 28 U.S.C. § 1331. The Court has supplemental jurisdiction over the related state claims, pursuant to 28 U.S.C. § 1367(a).

3.2 This Court has personal jurisdiction over all defendants. Venue of this action is proper because at the time the cause of action arose, defendants transacted business in King County, Washington, and because the cause of action asserted herein arose within King County.

IV. FACTS

4.1 Defendants have engaged and are continuing to engage in a pattern and practice of creating and sending to businesses, through the United States mail, thousands of deceptively-designed look-alike invoices (hereinafter the "look-alike invoices"). Defendants' look-alike invoices are designed to mimic legitimate bills for telephone and advertising services.

4.2 Defendants intentionally designed their look-alike invoice as a take-off on regularly-received legitimate invoices by using numerous misleading features, including, but not limited to, the following: substantially identical font, substantially identical color, substantially identical shape and size, substantially identical style, substantially identical word choice and word placement, substantially identical logos, and a request for payment of a distinctively odd sum of money (such as \$241.46). Defendants' look-alike invoices have been and are being sent to unsuspecting businesses in an envelope designed to appear substantially identical to the envelope in which legitimate invoices are sent.

4.3 Defendants have furthered their scheme by targeting businesses that regularly receive legitimate invoices similar to the look-alike invoices.

4.4 Defendants have engaged in the above-described scheme with the specific intent to defraud and deceptively induce unsuspecting businesses to send money to defendants believing that they are paying a legitimate invoice. Defendants' deceptive scheme has deceived plaintiff and others similarly situated into sending payment to defendants believing they are paying a legitimate invoice when they would not have otherwise have sent such payment.

1 4.5 Upon receiving fraudulently induced payments from plaintiff and others,
2 defendants list businesses who have paid money on an internet "directory" that is of little or
3 no business use.

4
5 4.6 Plaintiff is a regular recipient of legitimate invoices similar to defendants'
6 look-alike invoice. Plaintiff sent payment to defendants in the sum requested by the look-
7 alike invoice. Plaintiff was deceived by defendants' look-alike invoice into believing it was
8 paying a legitimate invoice and neither desired nor intended to receive a listing on
9 defendants' internet directory. Plaintiff suffered damages as a result of defendants' conduct
10 alleged herein.

11
12 4.7 Defendants' unlawful conduct, as alleged herein, is part of a pattern and
13 practice generally applicable to numerous businesses similarly situated to plaintiff.

14
15 4.8 At all times relevant to the allegations set forth herein, defendants have been
16 engaged in trade or commerce. Defendants' conduct as alleged herein is unfair and
17 deceptive, occurs in the course of trade or commerce, affects the public interest and has
18 caused injury to plaintiff and others similarly situated.

19
20 4.9 Defendants, by the foregoing conduct, have intentionally engaged in materially
21 false representations concerning the true nature of the mailings sent to plaintiff and others
22 similarly situated. Defendants intended these misrepresentations to induce reliance by
23 plaintiff and others similarly situated that the look-alike invoices were true invoices for
24 legitimate debts. Plaintiff and others similarly situated, justifiably relied on the appearance
25 of the look-alike invoices and paid the look-alike invoices without knowledge that the
26 invoices were not legitimate, thereby suffering damages.

1 **V. CLASS ACTION ALLEGATIONS**

2 5.1 **Class Type:** This lawsuit is brought as a class action pursuant to Rule 23(a)
 3 of the Federal Rules of Civil Procedure. In addition, this lawsuit is maintainable as a class
 4 action on the following grounds:
 5

6 (a) **Rule 23(b)(1)(A):** The prosecution of this action by individual members of
 7 the class would create a risk of inconsistent or varying adjudications that would establish
 8 incompatible standards of conduct for defendants;
 9

10 (b) **Rule 23(b)(1)(B):** The prosecution of this action by individual members of
 11 the class would create a risk of adjudications that would as a practical matter be dispositive
 12 of the interests of the other members not parties to the adjudications or would substantially
 13 impair or impede their ability to protect their interests;
 14

15 (c) **Rule 23(b)(2):** Defendants have acted on grounds generally applicable to the
 16 class, making final injunctive relief, which is sought in this lawsuit, appropriate with respect
 17 to the class as a whole; and
 18

19 (d) **Rule 23(b)(3):** Questions of law or fact common to the members of the class
 20 predominate over any questions affecting only individual members, and a class action is
 21 superior to other available methods for the fair and efficient adjudication of controversies in
 22 this case.
 23

24 5.2 **Class Definition:** This action is brought on behalf of all persons who, within
 25 the three years prior to the filing of this complaint, received and paid look-alike invoices.
 26 Plaintiff anticipates moving to certify one or both of two classes: (a) all persons meeting the
 27 foregoing definition located within the State of Washington who received the look-alike
 28

1 invoices in the State of Washington, and (b) all persons meeting the foregoing definition
2 located outside the State of Washington who received the look-alike invoices outside the State
3 of Washington.
4

5 5.3 **Class Size:** Plaintiffs do not yet know the precise size of the class, because
6 the information is presently within the exclusive control of defendants. However, based on
7 investigation, plaintiff believes and alleges that the class members located within the State of
8 Washington exceeds three hundred and that the class members located outside the State of
9 Washington exceeds four thousand.
10

11 5.4 **Plaintiffs' Representative Capacity:** The named plaintiff will fairly and
12 adequately represent the interests of the class. The named plaintiff has no identifiable
13 conflict with any other class members. The named plaintiff has retained competent counsel
14 with substantial experience in connection with litigation of matters of this nature in this
15 Court.
16

17 5.5 **Common Questions of Law and Fact:** Common questions of law and fact
18 predominate over any material questions affecting only individual class members. These
19 common questions of law and fact include, without limitation, whether defendants' receipt of
20 money as a result of mass mailing deceptive look-alike invoices to businesses that routinely
21 receive substantially identical legitimate invoices constitutes violations of state consumer
22 protection laws, including but not limited to the Washington Consumer Protection Act, RCW
23 19.86, intentional and/or negligent misrepresentation, and violations of the Racketeer
24 Influenced and Corrupt Organizations Act.
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1 5.6 **Rule 23(b)(3) Allegations:** The necessary Rule 23(b)(3) findings are
2 supported by the following allegations:

3 (a) The interests of members of the class in individually controlling the
4 prosecution of separate actions is extremely limited. In the absence of a class action,
5 individual litigation of these claims would be unreasonably expensive in light of the probable
6 damages that might be recovered, and it would waste money that would otherwise be
7 available to compensate the class members. In the absence of a class action, class members
8 who might otherwise possess a remedy, and would be able to thereby seek judicial relief,
9 would be left without a reasonable means to obtain justice and full compensation for their
10 damages.
11

12 (b) The plaintiffs are not aware of any similar litigation concerning this
13 controversy that has already been commenced by the members of the putative class, or
14 individually as against defendants.
15

16 (c) The concentration of litigation of the claims in this particular forum is
17 desirable insofar as the specific conduct that gave rise to the plaintiff's allegations occurred
18 in Washington and caused damages to many dozens of Washington businesses.
19

20 (d) The plaintiffs are unaware of any significant management problems that would
21 prevent this lawsuit from being efficiently and fairly maintained as a class action. The class
22 action mechanism is superior to all other alternatives (if any alternatives, in fact, exist for the
23 fair and efficient adjudication of this controversy. The identity and location of potential class
24 members, for purposes of adequate notification, can be ascertained from defendants' own
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records, and is not subject to reasonable dispute. Actual notice of the class action lawsuit should be possible in virtually every instance.

VI. CLAIMS

6.1 Plaintiffs repeat and reallege paragraphs 1.1 through 5.6 of this complaint as if fully set forth herein.

6.2 Washington Consumer Protection Act and consumer protection acts of other states: Defendants are liable to the plaintiff, and all other similarly situated class members, for violating Washington's Consumer Protection Act, RCW 19.86, et seq. and the consumer protection laws of other states.

6.3 Racketeer Influenced and Corrupt Organizations Act ("RICO"): Defendants are liable to plaintiff, and all other similarly situated class members, for violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, et al.

6.4 Fraud and/or Misrepresentation: Defendants are liable to the plaintiff, and all other similarly situated class members, for fraud and/or misrepresentation, based on defendants' (1) intentional and material misrepresentations, (2) with knowledge of the falsity of their representations or reckless disregard for their truth, (3) with the intent to induce reliance on them by the plaintiff and the others, and (4) the justifiable reliance by the plaintiff and other class members.

6.5 Plaintiff reserves the right to amend this complaint to add additional claims and/or class representatives.

VII. JURY DEMAND

Plaintiff, on behalf of itself and others similarly situated, demands that this case be tried by a jury.

VIII. RELIEF REQUESTED

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated class members, prays for the following relief:

1. That the Court award monetary damages in an amount to be determined at trial, which will fully and fairly compensate the plaintiff and others similarly situated for all actual, incidental, and consequential damages incurred as the direct and proximate result of the acts and omissions of defendants;

2. That the Court award punitive, enhanced or exemplary damages pursuant to Washington's Consumer Protection Act, the consumer protection laws of other states, and RICO;

3. That the Court permanently enjoin any conduct found to be unlawful;

4. That the Court award the plaintiffs their reasonable attorneys' fees, costs, and prejudgment interest; and

6. That the Court award such other further relief as it deems just and equitable under the circumstances.

1
2 DATED this 10 day of December, 2002.

3
4 BUDGE & HEIPT, P.L.L.C.

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7 Erik J. Heipt, WSBA # 28113

8 Edwin S. Budge, WSBA # 24812

9 Attorneys for plaintiff and putative class
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